

What Determines Eligibility for Industrial Design Protection in Myanmar?

In the dynamic landscape of industrial design protection, understanding the intricate criteria that dictate the eligibility of a design for safeguarding is paramount. This comprehensive guide unveils the essential facets that shape the protection of industrial designs, offering inventors and creators a clear pathway through the complex terrain of design rights within Myanmar.

1. Unveiling the Criteria for Industrial Design Protection in Myanmar

1.1. Novelty and Originality:

Central to securing industrial design protection is the embodiment of novelty and distinctiveness within the design itself, differentiating it from mere imitations or pre-existing creations. The following elements demystify the pivotal concept of novelty and its role in design protection:

(a) *Newness Requirement:* An industrial design earns the distinction of novelty if it remains uncharted in written records, untouched by utilization, unexposed through publication or exhibition, and undisclosed to the public through any medium, whether within the confines of the Republic of the Union of Myanmar or beyond its borders. This criterion stands steadfast until the very moment of registration application within the Union.

(b) *Priority Consideration:* When invoking the right of priority, the novelty of an industrial design is diligently evaluated based on its state prior to the stipulated date for the right of priority. This nuanced evaluation ensures equitable treatment and protection for designs across varying temporal contexts.

1.2. Distinctive Features and Absence of Notable Difference

An industrial design that culminates from the fusion of components belonging to designs already embedded in the public domain, or one that fails to manifest a noticeable divergence from a pre-existing design, falls short of the essential novelty required for safeguarding. The absence of a distinctive dissimilarity signals ineligibility for protection, reinforcing the importance of distinctiveness in design creation.

2. Boundary Lines of Ineligibility: Prohibiting Technological and Operational Inventions

Certain industrial designs find themselves excluded from the realm of protection due to their classification as technological or operational inventions. Designs that pertain to technological advancements or operational functionalities, despite their innovation, do not fall within the purview of industrial design protection, emphasizing a clear boundary between design and technology.

Preserving Values, Peace, and Stability: Ensuring the alignment of industrial designs with the esteemed values, peace, and stability of the Republic of the Union of Myanmar is paramount. Designs that challenge public peace, undermine stability, or compromise the cherished values of the nation, including beliefs and cultural norms, are unequivocally disqualified from protection. This criterion reinforces the symbiotic relationship between design and social harmony.

3. Empowering Industrial Design Applicants in Myanmar

3.1. Individuals with Entitlement: Unveiling the Rights

(a) **Inventor's Right:** The primary right to initiate the application for industrial design registration lies with the inventor of the design. Additionally, this right extends to the legal heir or legal transferee, creating a safeguard for the design's continuity.

(b) **Collaborative Creations:** In the realm of collaborative creativity, where multiple individuals jointly contribute to the formation of an industrial design, these co-creators collectively hold the authority to pursue the registration of the design.

3.2. Employment Agreements and Design Creation: Weighing the Rights

(a) **Employer's Right in Creation:** Within the realm of employment agreements, when an industrial design emerges as a consequence of collaboration between an employer and an employee, the right to apply for registration predominantly vests in the employer. This right is established unless explicitly stated otherwise within the agreement.

(b) **Employee's Right After Completion:** Upon the successful completion of an industrial design, the employer holds a six-month window from the moment of written notice by the employee to initiate the registration process. Should the employer neglect this responsibility, the employee gains the prerogative to initiate registration.

(c) **Design Creation after Employment Agreement Expiry:** The intricacies of industrial design creation beyond the boundaries of an employment agreement merit meticulous consideration. If an industrial design takes shape within one year following the termination of an employment agreement and aligns with the former employee's business domain, the former employer's right to apply for registration is acknowledged, provided no opposing clause is present within the agreement. However, if the employee can establish the absence of an opposing clause, they wield the exclusive right to register under specific conditions.

(d) **Employee's Exclusive Right:** In scenarios where an employee crafts an industrial design utilizing the employer's resources, data, or technology, and no transfer of rights occurs, the employee assumes the sole right to initiate registration. This exclusive right remains unaltered, unless expressly modified within the terms of the employment agreement.

(e) **Independent Creations by Employees:** Beyond the delineations defined in subsections (a), (c), and (d), employees possess the autonomous right to apply for the registration of an independently conceived industrial design, unless stipulated otherwise within the employment agreement.

A bottom line

In the multifaceted tapestry of industrial design protection in Myanmar, grasping the intricate eligibility criteria is a cornerstone for inventors and creators seeking to preserve their design rights. With clarity on the requisites for protection and a comprehensive understanding of entitlement within the diverse landscape of design creation, we hope that this guide paves the way for innovation and ensures the harmonious balance between creativity, culture, and legal safeguards within the Republic of the Union of Myanmar.

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